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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,518	01/26/2001	Pierre Messier	CLW 2 0142	5871

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EXAMINER

CHORBAJI, MONZER R

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 12/17/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/770,518

Applicant(s)

MESSIER ET AL.

Examiner

MONZER R CHORBAJI

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-9, 11-14, 16-20 and 22-27 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

- 5) ☐ Claim(s) _____ is/are allowed.

- 6) ☒ Claim(s) 1-4, 6-9, 11-14, 16-20 and 22-27 is/are rejected.

- 7) ☐ Claim(s) _____ is/are objected to.

- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.

- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

- a) ☒ All b) ☐ Some * c) ☐ None of:

1. ☒ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

- a) ☐ The translation of the foreign language provisional application has been received.

- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)

- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.

- 5) ☐ Notice of Informal Patent Application (PTO-152)

- 6) ☐ Other:

DETAILED ACTION

This final office action is in response to the amendment received on 09/19/2002

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 17 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In claim 17, lines 17-18; applicant uses the terms "a first sub-container and a second sub-container". Such terms were disclosed neither in the specification nor in the drawings.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-4, 6-9, 11-14, and 22-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Monticello et al (U.S.P.N. 6,106,774).

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With respect to claims 1, 6 and 11, Monticello teaches the following: an apparatus (col.7, lines 47-50), a method (col.10, lines 10-18), a composition (col.1, lines 14-16), a flash vaporization component (col.3, line 2), applying a liquid flash-dry disinfectant composition as an aerosol spray onto a surface (col.10, lines 49-52 and lines 57-59), 3 to 30% by volume hydrogen peroxide (col.2, line 12), 10 to 85% by volume of ethanol (col.2, line 6), and 10-65% by volume of water (col.2, line 14) such that the flash vaporization component being able to flash vaporize the composition thereby providing rapid and effective disinfecting action (col.9, lines 64-67).

With respect to claims 2, 7, and 12, Monticello teaches that the composition consists of flash vaporization component and an antimicrobial agent (col.2, lines 6 and 12).

With respect to claims 3-4, 8-9, 13-14, and 22-23, Monticello discloses that the antimicrobial agent includes hydrogen peroxide and the flash vaporization component includes ethanol (col.2, lines 6 and 12, and col.3, line 2).

With respect to claims 24-26, Monticello discloses a flash vaporization component, which includes an alkanol of formula ROH (col.3, line 2).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 16-20 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monticello et al (U.S.P.N. 6,106,774) in view of Mundschenk et al (U.S.P.N. 5,665,332).

The teachings of Monticello et al with respect to claims 1-4, 6-9, 11-14, and 22-26 have previously been set forth.

With respect to claims 18-20 and 27, the limitations in those claims were addressed above with regard to claims 2-4 and 24. However, with respect to claims 16 and 17, Monticello et al fails to disclose a dispenser with two separate chambers.

With respect to claims 16-17, Mundschenk, which is in the art of dispensing a disinfectant composition onto a surface (col.3, lines 10-17) using hydrogen peroxide (col.3, line 18) and an alcohol (col.5, lines 18-19), discloses that the dispenser includes multiple containers (col.4, lines 50-67). Furthermore, the dispenser includes a mixer (col.4, line 56 and line 62) wherein the various components are mixed just prior to application of the composition onto a surface. Thus, the choice of using a single container dispenser as taught by Monticello (col.10, lines 30-37) or a multi-container dispenser is known and further is well within the purview of the skilled artisan (Mundschenk et al, col.4, lines 60-67).

Response to Arguments

9. Applicant's arguments filed 09/19/2002 have been fully considered but they are not persuasive.

The Monticello reference was applied to show that 10% wt of hydrogen peroxide does fall within the range of 3 to 30% by volume of the amended claims 1, 6, 11 and 17. In addition, Monticello's 0.1-20% wt of ethanol and to 100% wt of water do fall within the ranges of the amended claims 1, 6, 11 and 17.

On page 7 of the response, applicant argues, "the composition of Monticello does not comprise 3 to 30% by volume of an antimicrobial agent". After verifying the numbers submitted in the conversion table on page 7, Monticello's range of 0.1-10% wt of hydrogen peroxide (col.2, line 12) does fall within 3 to 30% by volume of the amended claims.

On pages 7-8 of the response, applicant argues, "Monticello expressly discourages the use of higher concentrations of hydrogen peroxide as the antimicrobial agent". Monticello does explicitly state that higher concentrations of hydrogen peroxide may be provided (col.6, lines 61-62). However, depending on the usage (disinfecting surfaces) such high concentration ranges have no effect on a persons skin (for example, wearing gloves).

On pages 9-10 of the response, applicant argues, "it would not have been obvious to a skilled artisan in the pertinent art to separate the antimicrobial and flash vaporization components into two chambers". Mundschenk's dispenser contains hydrogen peroxide (col.3, line 18) and alcohol (col.5, lines 18-19) such that t the dispenser includes multiple containers or chambers (col.4, lines 50-67). Therefore, it would have been obvious to separate hydrogen peroxide and alcohol as disclosed by Mundschenk.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

11. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R CHORBAJI whose telephone number is (703) 305-3605. The examiner can normally be reached on M-F 8:30-5:00.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT J WARDEN can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3599 for regular communications and (703) 305-7719 for After Final communications.

14. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Monzer R. Chorbaji *MRC*
Patent Examiner
AU 1744
December 12, 2002

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